Notice No.: 84-002

Date: March 26, 1984

Applies to: All Employers

Subject: Charges to Employers for Excess Compensation

Over the last few years, certain employers, notable some units of local government, have adopted practices which inflate pensions of their retiring remployees at relatively little cost to themselves. Since a single basic rate is charged to all PERS employers, the extra retirement costs generated by these few employers have been spread over all employers. In the case of employers of TRS members, the costs were shifted directly to the state.

Rather than apply a significant rate increase to all employers, the legislature elected to address this problem by charging those responsible employers for these extra costs. To implement this decision, Substitute House Bill 843 (SHB 843) was passed during the recent legislative session and signed by the Governor. Section 1 of this bill amends chapter 41.50 RCW and provides the basis for the new charges. This section is quoted for your information and guidance:

"(1) The employer of any employee whose retirement benefits are based in part on excess compensation, as defined in this section, shall, upon receipt of a billing from the department, pay into the appropriate retirement system the present value at the time of the employee's retirement of the total estimated cost of all present and future benefits from the retirement system attributable to the excess compensation. The state actuary shall determine the estimated cost using the same method and procedure as is used for the legislature. However, the director may in the director's discretion decline to bill the employer if the amount due is less than fifty dollars. Accounts unsettled within thirty days of the receipt of the billing shall be assessed an interest penalty of one percent of the amount due for each month or fraction thereof beyond the original thirty-day period.

"(2) 'Excess compensation, ' as used in this section, includes any payment that was used in the calculation of the employee's retirement allowance, except regular salary and overtime, but is not limited to a cash out of unused annual leave in excess of two hundred forty hours of such leave, a cash out of any other form of leave, a payment for, or in lieu of, any personal expense, and any other termination or severance payment used in the calculation of the employee's retirement allowance. Any payment which is made pursuant to any labor agreement currently in force shall not be deemed excess compensation. Any payments in excess of regular salary and overtime, and two hundred forty hours of unused annual leave made after the expiration of a current contract shall be excess compensation.

"(3) This section applies to the retirement systems listed in RCW 41.50.030 and to retirements occurring on or after the effective date of this act. Nothing in this section is intended to amend or determine the meaning of any definition in chapter 2.10, 2.12, 41.26, 41.32, 41.40, or 43.43 RCW or to determine in any manner what payments are includable in the calculation of a retirement allowance under such chapters.

"(4) An employer is not relieved of liability under this section because of the death of any person either before or after the billing from the department."

Particular attention is directed to the sentence which reads: "Any payment which is made pursuant to any labor agreement currently in force shall not be deemed excess compensation." The following extract from the Senate Journal of Wednesday, March 7, 1984 concerning the Report of Free Conference Committee on SHB 843 is presented to clarify the intent of the referenced sentence and will be the basis of our implementation:

"POINT OF INQUIRY"

Senator Shinpoch: 'Referring to subsection (2) of section 1 of the bill, there are references there to 'any labor agreement currently in force' and also 'after the expiration of the current contract.'

'As the sponsor of the amendment adding this language to the bill, did you intend these references to include only traditional collective bargaining agreements with a recognized union bargaining agent? In other words, was this language intended not to extend to general personnel policies of an employer or individual written or oral agreements with individual employees?'

Senator McDermott: 'Senator Shinpoch, this language is intended to refer only to a traditional union collective bargaining agreement with a fixed expiration date. It was brought to me by the Association of Counties who has collective bargaining agreements in effect which will be allowed to run until the end of them and then they will have to negotiate a new contract under the terms of this bill.'"

ALL RETIREMENTS EFFECTIVE ON OR AFTER APRIL 1, 1984 ARE SUBJECT TO THIS LEFISLATION. Any employer believing it is currently exempt from charges in accordance with the labor agreement language is requested to notify us of this belief when one of its covered employees makes application for retirement.

All employers who have agreements, which they believe qualify for the charge exemption and which have expiration dates later than December 31, 1985, are requested to report this information to the department. Please include: (1) identification of the specific contract; (2) date executed; (3) expiration date; (4) number of employees covered; and (5) general description of the types of employees covered.

With respect to the exemption accorded under the contract provisions, three key elements must be present: (1) the contract must have arisen through the union bargaining process; (2) the language of the contract must deal specifically with the elements of excess compensation for which exemption from the charge provision is being sought; and (3) the contract must have been in effect on March 15, 1984.

CAUTION ABOUT CONVERSATIONS

Both for purposes of SHB 843 and for determination of retirement benefits, the status of conversions should be understood. The department will treat the conversion as though it never happened. For example: Employee A earned 100 hours of sick leave. A's employer allows 25 hours of this sick leave to be converted to 25 hours of annual leave. In a cash out for retirement purposes, if the 25 converted hours were cashed out, they would still be treated as sick leave and would, by definition, constitute excess compensation. To restate basic retirement principles:

1. Items are counted in the form in which earned.
2. It is the time period in which earned that counts, not the time period in which paid.
3. For retirement purposes, leave accounts are treated on a first in, first out basis.

As a final pint, SHB 843 did not change retirement benefits in any way. The member is entitled to the same benefits as before SHB 843. The only change has been in who will pay for benefits created by excess compensation.

NOTICE FOR TRS EMPLOYERS

All employers of TRS members should note that, although you do not at the present time pay an employer contribution for your TRS members, you are liable for costs generated by excess compensation as defined in SHB 843. Billings will be made directly to TRS employers, including school districts.

Robert L. Hollister, Jr.
Director